

ISSUES

The Special Administrative Law Judge awarded claimant benefits for bilateral hearing loss based upon an impairment rating of 23.4%. The respondent has requested the Appeals Board to review that finding. The sole issue before the Appeals Board is nature and extent of impairment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire record, the Appeals Board finds as follows:

(1) For the reasons expressed below, claimant is entitled to workers compensation benefits for a 23.4% permanent partial bilateral hearing loss. The decision and Award of Special Administrative Law Judge William F. Morrissey, dated May 16, 1994, should be affirmed.

Claimant is a fifty-seven (57) year old industrial arts teacher. In the fall of 1966, claimant was assigned to Pleasant Valley Junior High School to teach primary industrial arts and metal classes in addition to some drafting and electricity classes. Claimant taught the metal classes at Pleasant Valley from 1966 to 1988, a period of twenty-two (22) years. Sometime between 1966 and 1971, claimant began to experience hearing loss.

In the fall of 1988, claimant was transferred from Pleasant Valley to West High School where he taught wood and metal classes. Both at Pleasant Valley and West High School, claimant was consistently and extensively exposed to loud noise from a variety of machines. While at West High, claimant's hearing became worse and in the Summer of 1992 claimant was evaluated by Dr. Donald James, an otolaryngologist, who diagnosed noise-induced hearing loss and recommended that claimant be immediately removed from exposure to noise in the workplace. While Dr. James believes that the Director's formula for assessing hearing loss understates its severity, the doctor nevertheless evaluated claimant's impairment pursuant to Director's Rule 51-8-10 and found bilateral hearing impairment of 23.4%. Dr. James saw claimant again on December 10, 1992. Although the findings from the second examination were somewhat different, Dr. James did not modify his opinion regarding the extent of permanent impairment.

The claimant was also evaluated by Dr. Richard Cummings who believes claimant has experienced a twenty percent (20%) bilateral hearing loss, fifty percent (50%) of which he believes was caused by work-related exposure. Dr. Cummings testified that claimant's hearing loss occurred over time and that by 1990 he suffered from hearing loss which was aggravated by his continued exposure during the school years of 1990-91 and 1991-92.

The Appeals Board finds that it is more probably true than not that claimant has suffered bilateral hearing loss as a result of personal injury by accident which arose out of and in the course of his employment with respondent. For purposes of this award, June 2, 1992, will be used as the date of accident.

(2) The Appeals Board adopts the finding of impairment as expressed by Dr. James. It is more probably true than not that most, if not all, of claimant's hearing loss was due to work-related noise. Dr. Cummings' opinion that fifty percent (50%) of the loss resulted due to social noise and possibly congenital causes is not supported by the record and appears based upon conjecture and speculation. The opinion of Dr. James appears to be more credible in this instance.

Respondent contends that claimant's benefits should be reduced by the percentage that the hearing loss was caused by social noise. That contention is not supported by the law. It is well-settled that an accidental injury is compensable where the accident only serves to aggravate or accelerate an existing disease or intensifies the affliction.

When a worker with a pre-existing condition is accepted for employment and a subsequent industrial injury aggravates, accelerates, or intensifies his condition, resulting in disability, he is entitled to be fully compensated for the resulting disability. Baxter v. L.T. Walls Constr. Co., 241 Kan. 588, 591, 738 P.2d 445 (1987); Harris v. Cessna Aircraft Co., 9 Kan. App. 2d 334, 336, 678 P.2d 178 (1984).

(3) The Appeals Board adopts the findings and conclusions of Special Administrative Law Judge William F. Morrissey as set forth in his Award of May 16, 1994, that are not inconsistent with those findings and conclusions specifically set forth herein.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Special Administrative Law Judge William F. Morrissey, dated May 16, 1994, is affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of September, 1994.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: E. L. Kinch, 203 Occidental Plaza, 300 N. Main, Wichita, KS 67202
Robert G. Martin, 300 W. Douglas, Suite 500, Wichita, KS 67202
William F. Morrissey, Special Administrative Law Judge
George Gomez, Director